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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45356
Plaintiff-Respondent,)	
)	Elmore County Case No. CR-16-2463,
v.)	17-384 & 17-542
)	
JUSTIN CASE JAY,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Jay failed to show that the district court abused its sentencing discretion when it sentenced him to concurrent sentences of seven years with three years determinate upon his convictions for two counts of grand theft?

ARGUMENT

Jay Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The state, in consolidated cases, charged Jay with two counts of grand theft by possession of stolen property (financial transaction cards), grand theft by possession of a stolen vehicle, possession of methamphetamine, possession of drug paraphernalia, and petit theft by possession

of stolen property. (R., pp. 22-24, 32-34, 46-47, 68-69, 110-11.) A jury found him guilty of two felony counts of grand theft by possession, an included offense of operating a vehicle without the owner's consent, and petit theft by possession of stolen property. (R., pp. 166-69.) The district court sentenced Jay to time served on the misdemeanors (which sentences are not challenged on appeal) and, on the felonies, imposed concurrent sentences of seven years with three years determinate and retained jurisdiction. (R., pp. 175-90.) Jay timely appealed. (R., pp.194-97.)

On appeal Jay challenges the sentences for his felony grand theft convictions, contending the district court "did not give adequate consideration to mitigating factors," specifically his "family situation," his "problems with substance abuse," and his "remorse and acceptance of responsibility." (Appellant's brief, pp. 5-7.) Jay's argument, however, ignores the district court's findings, which are amply supported by the evidence in the record. Jay's wish that the court had differently weighed the various factors it considered does not show any abuse of discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

When considering whether the sentence was an abuse of discretion, "this Court considers: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion

and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.”

State v. Fisher, 162 Idaho 465, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

C. Jay Has Shown No Abuse Of The District Court’s Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. A sentence is reasonable “if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” Bailey, 161 Idaho at 895–96, 392 P.3d at 1236–37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court applied the correct legal standards. (Tr., p. 170, Ls. 3-7.) The court considered Jay’s argument that his young son needed him, but also concluded that Jay had neglected his son to pursue his drugs and criminal lifestyle for the boy’s entire life. (Tr., p. 171, Ls. 1-21; see also PSI, pp. 18-19.) The court found that Jay’s criminal actions had “significant impacts to the community.” (Tr., p. 171, L. 22 – p. 172, L. 3.) The court also concluded that,

although this was technically Jay's first adult felony conviction, Jay had been living "the lifestyle of a criminal" for a "long time." (Tr., p. 173, Ls. 12-25; see also PSI, pp. 4-12.) Although it would "take a lot" to convince the court that Jay was capable of a successful probation, the court gave Jay the opportunity to demonstrate his amenability to probation by retaining jurisdiction. (Tr., p. 173, L. 20 – p. 174, L. 19; see also PSI, pp. 20-22.)

Jay's argument that the district court "did not adequately consider Mr. Jay's family situation" (Appellant's brief, pp. 5-6) simply ignores the district court's findings. Jay contends his criminality was caused by the death of his child's mother and that he was willing to do anything for his son. (Appellant's brief, p. 6.) This ignores the district court's findings that Jay had been essentially ignoring his son for years and that his criminality was long-standing. (Tr., p. 171, Ls. 1-21; p. 173, Ls. 14-25.) The district court's finding is well supported by the record. (PSI, pp. 4-12.)

Jay's argument that the district court "did not adequately consider" his substance abuse and desire to address that problem (Appellant's brief, p. 7) fails for the same reason. The court made specific findings about how Jay had been abusing drugs since he was 17 and had been for about ten years in a cycle of using and stealing and that his behavior had significantly impacted society. (Tr., p. 171, L. 1 – p. 172, L. 3.) Again, this determination is supported by the evidence. (PSI, pp. 4-12, 18-19.) Jay may not like the court's conclusion that his long-standing drug-fueled criminality weighed in favor of the sentence, but he has fallen far short of showing an abuse of discretion.

Finally, Jay's expressions of remorse and acceptance of responsibility (Appellant's brief, p. 7) were not entitled greater weight. Based on all the facts, the district court concluded that it

would take a lot to convince the court that probation was appropriate. (Tr., p. 173, Ls. 20-25.)
That the court did not simply accept Jay's words over his actions is hardly surprising.

Jay has failed to show any abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 14th day of May, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General